



Information Alert

State-Federal Relations Division

U.S. Army Corp of Engineers Encourages States to Take Full Responsibility for Clean Water Act Permitting

Aug. 7, 2018

The U.S. Army Corps of Engineers (the Corps) issued a [memorandum](#) encouraging states to “take an active role in the permitting of dredge and fill operations,” in waterways and wetlands as allowed by [Section 404\(g\)](#) of the [Clean Water Act \(CWA\)](#). Although the CWA currently allows states to assume control over the dredge-and-fill program for most waters in their state, only two states—Michigan and New Jersey—have done so since the law was enacted in 1972. By comparison, more than 40 states have taken over a separate CWA permitting program for discharges from factories and wastewater treatment plants.

The Corps memo indicates their decision is intended to help states “better balance their environmental protection mission with their economic development goals,” although taking on such authority will likely require a state to assume the budgetary responsibility for the program. The Environmental Protection Agency (EPA), which oversees the program at the federal level, is in the process of updating its regulations for how a state can assume control of the program. EPA is responsible for reviewing permitting standards proposed by states to ensure they are equal to, or more stringent than, the federal standards.

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities associated with the named section include fill for development, dam and levee construction, highway and airport infrastructure development, mining projects, and others. The memo issued provides a narrow interpretation of the CWA’s requirement for the federal government to retain oversight of waterways used for [interstate navigation](#), which would allow for states to assume control of most wetlands and streams within their own boundaries.

The memorandum does not affect the scope of “waters of the United States” under the Clean Water Act, and it only addresses the division of responsibility between the Corps and a state that assumes control of the Section 404(g) program.

If you have any further questions or concerns surrounding the announcement please contact NCSL staff [Kristen Hildreth](#) (202-624-3597), or [Ben Husch](#) (202-624-7779).